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Supreme Court, U. S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

TALLEY R. HOLMES, JR.,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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QUESTION PRESENTED

May the government of the District of Columbia require District of Columbia property owners to conform their property to lead paint requirements without regard to the cost of such an operation and enforce such a requirement by force of criminal penalties?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

OPINION BELOW 1

JURISDICTION 1

SUMMARY OF FACTS 2

REASONS FOR GRANTING THE WRIT 5

I. The Enforcement of the District of Columbia Housing Code in Such a Manner Is a Deprivation of Property in Violation of the Fifth Amendment 5

II. The Court's Interpretation and Enforcement of Section 2605 as a Criminal Statute Is Void for Vagueness Under the Constitution 8

CONCLUSION 11

APPENDIX—Opinion of District of Columbia Court of Appeals, dated 7/25/80 . . . . . 1a

TABLE OF AUTHORITIES

Cases: *Page*

Apartment and Office Building Association v. Washington (A.O.B.A. I), 343 A.2d 323 (D.C. App. 1975) 6

Apartment and Office Building Association v. Washington (A.O.B.A. II), 381 A.2d 588 (D.C. App. 1977) 7

Block v. Hirsh, 256 U.S. 135 (1921) 6

Bowles v. Willingham, 321 U.S. 503 (1944) 6

Brooks-Scanlon v. Railroad Commission, 251 U.S. 396 (1920) 7

Cobb v. Bynum, 387 A.2d 1095 (D.C. App. 1978) 6

District of Columbia v. Edgcomb, 305 A.2d 506 (D.C. App. 1973) 10

Kennedy Bros. v. Sinclair, 52 U.S. App. D.C. 398, 287 F. 972 (1923) 7

Moore and Hill v. Marshall, 52 U.S. App. D.C. 326, 286 F. 990 (1923) 7

Pennsylvania Coal v. Mahon, 260 U.S. 393 (1922) 6, 7

Rose v. Locke, 423 U.S. 48 (1975) 9

Rust v. Harvey, 52 U.S. App. D.C. 326, 286 F. 990 (1923) 7

United States v. Brewer, 139 U.S. 278 (1891) 10

United States v. Harris, 347 U.S. 612 (1954) 9

Whetzel v. Jess Fisher Management, 108 U.S. App. D.C. 385, 282 F.2d 943 (1960) 8

Wright v. Georgia, 373 U.S. 284 (1963) 10

Youngstown Sheet and Tube Company v. Sawyer, 343 U.S. 579 (1952) 8

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OPINION BELOW

The District of Columbia Court of Appeals rendered its decision on July 25, 1980 in an opinion that is not yet reported. A copy of that opinion is attached in petitioner's appendix.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT OF FACTS

Petitioner is an owner of residential property in the District of Columbia. On July 1, 1977, during the course of an inspection of petitioner's property located at 1213 Fourth Street, N.W., the District of Columbia Department of Housing noted evidence of excessive concentration of lead in the interior surfaces. (R.T. 9)[1] The housing inspector found samples in several areas that exceeded the permissible standard of 1.0 milligram per square centimeter. (R.T. 9) A housing deficiency list was prepared and served on petitioner. (R.T. 10) Upon petitioner's failure to abate the violations to the satisfaction of the Housing Department, petitioner was charged in a 20 count criminal information of violation of the District of Columbia Housing Code.

On December 2, 1977, petitioner's non-jury trial began before the Honorable Fred McIntyre. At trial, Corporation Counsel for the District of Columbia presented several witnesses. The first witness, a housing inspector, testified concerning the lead content of petitioner's property located at 1213 Fourth Street, N.W. (Dec. 2, R.T. 8) The inspector indicated that he found lead concentrations in excess of the statutorily permissible levels. (Dec. 2, R.T. 9-11) The inspector also testified that petitioner was given 15 days to correct the violations. (Dec. 2, R.T. 12)

Corporation Counsel and counsel for petitioner entered into a stipulation which admitted: (1) that petitioner was the owner of the property; (2) that the lead content

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[1]All transcript references are noted "R.T." for Reporter's transcript.

was in excess of statutory levels; (3) that proper notice had been served upon petitioner; (4) that appellant sought an extension of 100 days in order to vacate the premises; and (5) that petitioner's extension request was denied by the Department of Housing.

The defense case consisted of two witnesses, the petitioner and Mr. Arnold Young, the coordinator of inspectors from the Housing Department. It was petitioner's position at trial that the admitted violations could be abated by simply vacating the premises. It was upon that belief that petitioner, on August 1, 1977, gave notice to his tenant at 1213 Fourth Street, N.W. to vacate within ninety days. Petitioner explained at trial that the economics of the situation dictated that it would be very poor business judgment to perform the repairs at once. (Dec. 5, R.T. 28-30) Petitioner based this conclusion on the following factors: (1) the original cost of the property was $7,000 purchased two years prior to this incident, (2) the tenant paid rent of $115.00 per month, and (3) the cost of the required repairs would be from $2,000 to $4,000. (Dec. 5, R.T. 25) Thus, although petitioner said that he did not want to vacate the property, he felt that since the cost of repairs would be the equivalent of at least two years rent that he had no choice but to give notice to vacate to the tenant. (Dec. 5, R.T. 30) The notice of August 1st to vacate was given to the tenant four days after receipt of the violation notice.

Petitioner also testified that he was not permitted by the District's Rent Control Law to put the tenant out within the 15 days allowed him to correct the lead violation. (Dec. 5, R.T. 39) Thus, he gave the tenant 90 days to vacate the property. (Dec. 5, R.T. 39) Because

this put petitioner in the difficult position of complying with Rent Control by violating the lead paint order, he requested, on August 8, 1977, an extension of 100 days for enforcement of the housing order. (Stipulation IV, R. 63) This request was made within the initial 15 day limit of the lead paint order and was made specifically for the purpose of vacating the property. (Stipulation IV, R. 63) This request was denied by the Housing Department. Thus, while the tenant looked for a new apartment, and the petitioner waited for the 90 days to expire, the Housing Department and Corporation Counsel counted each day of noncompliance as a separate violation. (Dec. 2, R.T. 28)

In his testimony petitioner noted that he had cured prior lead paint violations in some properties (Dec. 5, R.T. 24), and was forced to sell other property which was economically unfeasible to conform. (Dec. 5, R.T. 41) Petitioner added that the lead paint problem in the instant case was one he had unknowingly "inherited" from the prior owner of the property. (Dec. 5, R.T. 21) Petitioner concluded his testimony by indicating that although he had given the tenant notice to vacate she refused to move from the premises. (Dec. 5, R.T. 39) As a consequence, petitioner was forced to undertake eviction proceedings in the landlord and tenant branch of Superior Court. (Dec. 5, R.T. 39) After some dispute, the tenant eventually vacated the premises. (Dec. 5, R.T. 40).

On December 5, 1977 the trial concluded and the trial court took the matter under advisement. On June 9, 1978, the trial court issued an opinion which contained findings of fact and conclusions of law. This opinion held that petitioner was guilty as charged. On July 8,

1978 petitioner was sentenced to a term in jail of five days or $150.[2] Petitioner filed a timely notice of appeal.

On July 25, 1980, the Court of Appeals for the District of Columbia affirmed petitioner's conviction in all respects. The court relied almost entirely upon the trial court's memorandum.[3]

Petitioner is thus required to file the instant petition for review.

I.

THE ENFORCEMENT OF THE DISTRICT OF COLUMBIA HOUSING CODE IN SUCH A MANNER IS A DEPRIVATION OF PROPERTY IN VIOLATION OF THE FIFTH AMENDMENT

The position accepted by the Courts below that the elimination of the tenancy would not be available as an abatement option raises the specter of an unconstitutional taking of private property by government action. It is petitioner's position that faced with the economic realities of the instant case, any decision which precludes the option to vacate and forces petitioner to operate in compulsory fashion is unconstitutional. Thus the imposition of criminal penalties, as in the present case, is constitutionally infirm.

Petitioner purchased the property in question sometime in 1976. (Dec. 5, R.T. 20) He paid a total of $7,000 for the property. (Dec. 5, R.T. 21) The rent collected by petitioner totaled approximately $1,300 per

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[2]Petitioner has paid the $150 fine in full.

[3]The trial court's opinion is reproduced in full in the Court of Appeals decision attached at Appendix A.

year. (Dec. 5, R.T. 21) The petitioner estimated that the repair of the violations would cost from $2,000 to $4,000. (Dec. 5, R.T. 25) The District government estimated the cost at $1,700. (Dec. 5, R.T. 13) Thus it is clear that the mandated work would require an expenditure equal to 130% (minimum) or 300% (maximum) of the total yearly rent. This estimate assumes that no other expenditures such as taxes or utilities (Dec. 5, R.T. 29) are paid. These additional expenditures would, of course, dramatically increase this ratio.

The District of Columbia Court of Appeals has defined its reviewing function of property regulations as a protection of "the property owner from regulation which is so unreasonable as to constitute a taking of his property in contravention of the Fifth Amendment." *Cobb v. Bynum,* 387 A.2d 1095, 1097 (D.C. App. 1978). In fact, that Court has held provisions of the Rent Control Act of 1973 to be confiscatory, on just such a basis. *Apartment and Office Building Association v. Washington* (A.O.B.A. I), 343 A.2d 323 (D.C. App. 1975). It was this function of review which the Court of Appeals neglected in the present case.

Economic controls on property have been constitutionally sustained on many occasions. *Bowles v. Willingham,* 321 U.S. 503 (1944); *Block v. Hirsh,* 256 U.S. 135 (1921). Nevertheless, as Mr. Justice Holmes cautioned in *Pennsylvania Coal v. Mahon,* 260 U.S. 393 (1922):

> "The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but it provides that it shall not be taken for such use without compensation . . . . The general rule . . . is that while property may be

> regulated to a certain extent, if regulation goes too far it will be recognized as a taking." [*Mahon* at p. 415]

It is precisely this unconstitutional step which the District now attempts to take under pressure of criminal penalties. Petitioner is not a public utility. He should not be compelled to operate his business at a substantial loss. Despite the acute need for housing, any policy which requires offering of such housing by force has great significance to the social and economic vitality of the District. *See* Harris, J., dissent, *Apartment and Office Building Association v. Washington* (A.O.B.A. II), 381 A.2d 588, 593 (D.C. App. 1977).

It was in *A.O.B.A. II* that the Court of Appeals discussed the rate of return on investment as an indicia of unconstitutional taking. In laying down guidelines, the decision relied upon principles announced much earlier in relation to a prior rent control law. *Kennedy Bros. v. Sinclair,* 52 U.S. App. D.C. 398, 287 F. 972 (1923); *Rust v. Harvey,* 52 U.S. App. D.C. 320, 286 F. 782 (1923); *Moore and Hill v. Marshall,* 52 U.S. App. D.C. 326, 286 F. 990 (1923). These cases and later decisions by this Court establish the principle that a property owner must have a reasonable return on his investment. Anything less is confiscatory and thus prohibited under the Fifth Amendment. *See Brooks-Scanlon Co. v. Railroad Commission,* 251 U.S. 396 (1920).

The action of the District of Columbia Court of Appeals forces the petitioner to operate for the public benefit without just compensation. Moreover, such a requirement because it is not a "taking" authorized by an official act, cannot be compensated by the traditional avenues of redress. *See Youngstown Sheet and Tube*

Company v. Sawyer, 343 U.S. 579, 585 (1952). Thus the petitioner's only alternative (since withdrawl from the market is a forbidden alternative) is to operate his business at a loss.

It should be clear that the forced expenditure, under pain of fine or jail is totally unreasonable in light of the economic returns offered to the petitioner. The petitioner does not engage in business as a public utility. The denial of the option to vacate and the required expenditure of funds constitutes a violation of petitioner's Fifth Amendment rights.[4]

II.

THE COURT'S INTERPRETATION AND ENFORCEMENT OF SECTION 2605 AS A CRIMINAL STATUTE IS VOID FOR VAGUENESS UNDER THE CONSTITUTION

As the prosecution of appellant makes clear, the District of Columbia views Section 2605 of the Housing Code as enforceable as part of the criminal law. Because corporation counsel views each day of noncompliance as an individual violation, (Dec. 2, R.T. 28-29) a single infraction could rapidly become a crime equal in punishment to a traditional felony. In fact, appellant himself faced 200 days in prison and $6,000 in fines (Dec. 2, R.T. 28).

The seriousness of this prosecution must be viewed, assuming the option to vacate is not permitted, against the unusual compliance required. As the trial court noted *sua sponte* of the inspector: "How do you expect

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[4]The court's denial of the option to vacate puts it into conflict with the earlier circuit court opinion in *Whetzel v. Jess Fisher Management,* 108 U.S. App. D.C. 385, 282 F.2d 943 (1960).

someone to go in there and get all that work done in fifteen days?" (Dec. 5, R.T. 13)[5] Adding to the problem of the difficulty of compliance is the housing division's refusal to grant petitioner the extension he had requested.

Unlike the normal criminal statute, compliance with section 2605 is fraught with difficulties for the average homeowner. Because obedience to the law revolves around the central issue of economics, the decision to comply is a subjective one determined by the value of the compliance investment versus the value of the property.[6] Such a variable of judgment is impermissible in a criminal law.

It is well settled that the Due Process Clause prohibits the District government from holding an individual criminally responsible for conduct which he could not reasonably understand to be proscribed. *Rose v. Locke*, 423 U.S. 48, 49 (1975); *United States v. Harris*, 347 U.S. 612, 617 (1954). However, it is the inability to determine the critical point at which the exercise of valid police power becomes a confiscatory overreach by the authorities that prevents petitioner from conducting his commercial affairs in a predictable and safe fashion. As this Court said almost 90 years ago:

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know

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[5]It is instructive to note that in the exchange with the housing inspector the court remarked: "Have you ever tried to get someone to come in to do a paint job in your house? I'm telling you, by the time you have someone come in, and they say, 'Well, we'll be back next week,' and even for just a minor job, why, it sometimes runs into two weeks, and maybe a month, before they can do it."

[6]Petitioner assumes that even Corporation Counsel would not require compliance if the cost of repair would equal the total value of the property. However, this assumption cannot be verified since the District has no formal policy in this area.

> what acts it is their duty to avoid. *United States v. Sharp,* Pet. C.C. 118."

United States v. Brewer, 139 U.S. 278, 288 (1891).

The failure to give adequate notice to delineate the line between permissible action and criminal conduct calls into question the constitutionality of the enforcement of Section 2605. *Wright v. Georgia,* 373 U.S. 284 (1963). When directions are so vague, indefinite or uncertain that the law is ambiguous, the law must be condemned as repugnant to the Due Process clause of the Fourteenth Amendment. *Lanzetta v. New Jersey,* 306 U.S. 451, 458 (1939).

Under the present scheme, petitioner could easily be forced into the situation of repairing a property at a cost of several times its value. While such an order would not be seriously contemplated by the enforcement authorities, at what point those authorities would consider the repair operation not worth the cost is unknown. Such ambiguity clearly prevents, the "systematic, consistent and just order of treatment," which the Court of Appeals has required of other statutes when faced with the same challenge. *See District of Columbia v. Edgcomb,* 305 A.2d 506 (D.C. App. 1973).

Putting a person to the pressure of criminal prosecution for actions or inactions based on subjective financial determinations is repugnant to due process of law. The enforcement of Section 2605 in the manner proposed by the trial court undertakes just such an impermissible goal. Such an interpretation must not be allowed to stand judicial scrutiny.

CONCLUSION

For the above reasons petitioner prays that the writ be granted.

Respectfully submitted,

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 13971

TALLEY R. HOLMES, JR., APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Superior Court
of the District of Columbia

(Hon. Fred L. McIntyre, Trial Judge)

Judgment entered this date

(Argued December 11, 1979 Decided July 25, 1980)

Dennis M. Hart, with whom *Kenneth Michael Robinson*, was on the briefs, for appellant.

Edward E. Schwab, Assistant Corporation Counsel, with whom *Judith W. Rogers*, Corporation Counsel, and *Richard W. Barton*, Deputy Corporation Counsel, were on the brief, for appellee.

Before GALLAGHER, HARRIS and MACK, *Associate Judges.*

MACK, *Associate Judge*: Appellant/landlord was convicted of violating those sections of the Housing Code regulating the presence of lead paint in residential rental units. District of Columbia Housing Regulations §§ 1301, 2104, and 2605.4. In his defense he asserted that in lieu

of correcting the violation, he had an option to evict the tenant and remove the premises from the rental housing market.[1] The trial court disagreed. On appeal he argues: 1) that the 1973 amendments to the Housing Code did not eliminate a then-existing option to vacate nonconforming property as a form of abatement of the violation; therefore he did not violate the regulations; 2) if the amendments eliminated that option, their enforcement is an unconstitutional taking of his property; 3) criminal enforcement of the regulations is unconstitutional under the void-for-vagueness doctrine. We do not find appellant's arguments persuasive and thus affirm.

I.

The trial judge very ably set forth the relevant facts and law in this case. We approve and quote his Order in full.

STATEMENT OF FACTS

On July 1, 1977, the District of Columbia Department of Housing and Community Development inspected 1213 Fourth Street, N.W., premises owned by Mr. Talley R. Holmes, Jr. Pursuant to such inspection a report was prepared delineating forty-two (42) items that had to be corrected because of excessive levels of toxic lead paint on the interior walls within such premises.

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[1] Appellant has previously come before us in similar circumstances. In *Holmes v. District of Columbia,* D.C.App., 354 A.2d 858 (1976), he had been convicted of violating the same regulations. There he also asserted that a landlord may evict a tenant in lieu of remedying the violation. We held that the issue was not properly raised because Holmes by his actions did not demonstrate a sincere intent to remove the rental unit from the market. In the instant case, this factual obstacle has been overcome to the limited extent that he actually ordered the tenant evicted.

Notice of said violations was issued on July 20, 1977, and was received by the defendant, Mr. Talley Holmes, Jr., on or about July 27, 1977. The defendant was given fifteen (15) days from the date of service to correct the housing violations.

On August 1, 1977, the defendant gave the tenant of the premises notice to vacate within ninety (90) days because of the "lead poisoning problem".

On August 8, 1977, the defendant wrote the Department of Housing and Community Development requesting an extension of one hundred (100) days in order to comply with the notice of housing violations. In requesting the extension, the defendant indicated he intended to comply with the notice by vacating the premises within a ninety (90 to one hundred (100) day period.

The Acting Deputy Administrator responded in a letter dated August 19, 1977, stating that these violations are "among the most serious which the Housing Regulation Division encounters in terms of their potentially devasting and fatal effects on the health and safety of small children . . . an extension would be inappropriate under the circumstances, and is therefore denied".

The District of Columbia Department of Housing and Community Development re-inspected the premises on August 10, 1977, and again on August 29, 1977. On each occasion it was noted that lead paint violations had not been corrected.

The tenant subsequently vacated said premises, and the housing violations, as of December 5, 1977, remained unabated.

On October 11, 1977, the defendant Mr. Talley R. Holmes, Jr., was charged with violation of 2605 of the District of Columbia Housing Regulations as amended April 12, 1973.

CONCLUSIONS OF LAW

In the instant case the defendant contends that a landlord may evict a tenant rather than make the repairs necessary to bring his premises into compliance with the Housing Code.

The court disagrees with the defendant's interpretation of the District of Columbia Housing Regulations, and concludes that no such option is available to the defendant.

Admittedly, prior to April 12, 1973, there was a provision in the housing regulations that permitted a landlord to terminate a tenant's occupancy of a premises where lead was found in sufficient quantity to constitute a health hazard to the occupant.

However, the option to vacate was removed when the housing regulations were amended on April 12, 1973. The removal of such option was apparently purposeful. Vice Chairman Sterling Tucker in a memorandum to the City Council stated: "the Committee is aware that there are thousands of dwelling units in the inner city which have exposed interior surfaces with lead above the permitted tolerances. By enacting this strict standard, it is not our intention to cause property owners to displace their tenants." *

Thus, it appears patently clear that the City Council in enacting the amendments of April 12, 1973, intended that landlords would be foreclosed from vacating premises where impermissible levels of toxic paint exist, and to

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* The Memorandum of Vice Chairman Sterling Tucker was incorporated into the minutes of the March 20, 1973, meeting of the City Council at which the first reading of the amended regulations occurred. The said amended housing regulations without further discussion passed unanimously.

require the abatement of the health hazard with the minimum of delay.

In the proceedings before the trial court, the defendant, in addition to raising the option issue, contended that the Housing Authorities failed to provide him with a reasonable period of time to make the necessary repairs to the premises. With regard to this issue the defendant at no time, during the pendency of the proceedings at the administrative level, requested or endeavored in anyway to enlarge the time for bringing the premises into compliance. Contrarily, his only application to the Housing Authorities was a letter dated August 8, 1977, seeking a one hundred (100) day extension so that compliance could be carried out by having the tenant vacate the premises.

Additionally, at the trial court level the defendant asserts that the bringing of the premises into compliance will be expensive and difficult. Of course, such reasons are insufficient to avoid compliance with required safety standards. *Levengard* v. *District of Columbia*, 254 D.C. App., A.2d 728 (1969); *Holmes* v. *District of Columbia*, 354 D.C. App., A.2d 858 (1976).

The burden on the defendant mandated by the housing authorities was the removal or adequate covering of lead paint in a single premises located at 1213 4th Street, N.W. The District of Columbia government estimated the cost to be $1,700. The defendant estimated the figure to be $2,000, and somewhat higher if he were unable to employ the use of his own repair personnel.

The record discloses the defendant was given fifteen (15) days from the date of service to correct the housing violations.

Further, no prosecution was instigated until October 11, 1977, when it became apparent that no action of a tem-

porary or permanent nature was being undertaken by the defendant to correct the pending housing deficiencies.

In all, the defendant had more than seventy (70) days to remedy the housing violations. During this entire time the defendant had made no good faith effort to carry out what the law mandated him to do. Under the totality of the circumstances it cannot be concluded that the obligation placed upon the defendant, and the time period within which to do it was unreasonable. *Holmes* v. *District of Columbia, supra; Levengard* v. *District of Columbia, supra.*

Accordingly, the court finds the defendant guilty of the charges contained in the Information.

/s/ Fred L. McIntyre
FRED L. MCINTYRE
Judge

II.

The essence of appellant's due process claim is that to compel him to expend his resources to permanently remedy the violation, rather than remove the property from the market, is an unconstitutional taking; that construed in this manner, the regulations are unconstitutional. We are not presented with facts raising this issue. As we have said on a previous occasion on this subject:

> [A] landlord may withdraw his units from the market where such action is based on purely economic considerations. *See, e.g., Robinson v. Diamond Housing Corporation,* 150 U.S.App.D.C. 17, 463 F.2d 853 (1972). However, the landlord's right to "abate by eviction" is not unfettered, and must be examined in light of the underlying policy of the housing code "to increase

> rather than decrease the stock of habitable housing in the District of Columbia." *Robinson v. Diamond Housing Corporation, supra* at 33, 463 F.2d at 869. The propriety of the withdrawal of noncomplying units would turn upon the difficult factual determination of whether the landlord was unable or merely unwilling to make the necessary repairs, and further would involve consideration of whether the eviction was based upon retaliatory motivations. [*Holmes v. District of Columbia, supra* at 859.]

Moreover, as appellant is aware, we have refused to overturn enforcement of the Housing Regulations "merely because [compliance] is expensive or difficult." *Levengard v. District of Columbia*, D.C.App., 254 A.2d 728, 729 (1969).

The facts here clearly indicate that appellant was *unwilling* to take any action to abate the violation short of eviction—this in the face of a clear emergency for the health and safety of the tenants. The discovery by the Housing Authority of the lead paint problem was triggered in this case by a referral from a Department of Human Resources clinic. The tenant's child had been found to have above-normal lead in her system. Thus at the time the landlord was notified of these violations, a serious health situation already existed. There were a number of steps appellant could have taken immediately. As the housing inspector testified:

> Concerning the nature of the emergency, and the nature of the violations in this particular case, the majority of the violations were on wood trims, windows and doors, and they could have been covered temporarily with vinyl or paper or tape, and we would have gone along with Mr.

> Holmes had that been done and if it would have taken him longer to correct them in another fashion which he deemed appropriate.
>
> There are things that he could have done within two weeks, or seven days, or twenty-four hours, had he decided to do those things . . . . . .
>
> [I]t was twenty days after the fifteen that we decided to refer the case for prosecution, so that's thirty-five days he had had time to get an estimate. If he had an estimate in hand, we would have strongly recomended these other alternatives . . . until such time as the contractor had started his contract.

Appellant did nothing other than give the tenant a 90-day notice to quit, and request a 100-day extension in order to comply by eviction—despite the emergency, despite the ready possibility of quick temporary resolution.[2] He has made no showing that he was unable to make the necessary repairs of either a temporary or permanent nature. He cannot now be heard to argue that the Constitution sanctions his failure to act.

Even if appellant were unable to take the remedial steps necessary to comply with the Housing Regulations, he could not prevail here. In the context of criminal enforcement, the fact that an injury may be ameliorated at some time in the future is immaterial. The issue at trial was whether appellant failed to correct the lead

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[2] Even assuming, arguendo, that appellant were truly *unable* to remedy the violation, we do not read D.C. Code, 1980 Supp., § 45-1699.6 as mandating 90-day notice. The situation is not specifically addressed by the provisions in subsection (b). Accordingly, the 30-day notice provision of subsection (c) (5) would appear applicable.

paint hazard within the requisite 15 days. He did not. Time was of the essence. The argument that the premises would be vacant within 90 days is irrelevant. Appellant was required to do something immediately. There is ample evidence in the record of temporary, inexpensive steps which could have been taken during the 15-day period. The defense of abatement by 90-day eviction is unavailable here.[3]

III.

The thrust of appellant's contention that criminal enforcement of these regulations must fail under the void-for-vagueness doctrine is that compliance is a question of economics, dependent on weighing the value of the property against the cost of remedial efforts. He asserts that criminal prosecution for action or inaction based on such subjective financial determinations is "repugnant to due process of law." We do not accept this characterization of the regulations or their enforcement. Appellant was prosecuted for taking *no* action, temporary or permanent, in the face of clear notice of a serious violation. Housing Regulation 2605.4 requires

> The owner of a residential building shall maintain the interior surfaces of the building free of lead or lead in its compounds in any quantity of more than one milligram per square centimeter (1 mg/cm^2) or in any quantity sufficient

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[3] As indicated in *Holmes, supra,* where a landlord can demonstrate that he was economically unable to permanently rehabilitate the premises, the Constitution requires that he be allowed to remove the property from the market. But that issue is more properly raised in the context of an eviction proceeding. It is separate and distinct from the issue here of criminal liability for failure to take any protective steps in a lead poisoning emergency.

> to constitute a hazard to the health of any inhabitant of, or visitor to, the building.

We think it obvious that the regulation gives notice of the conduct forbidden, with sufficient specificity to survive a void-for-vagueness challenge. *See Willcher v. United States*, D.C.App., 408 A.2d 67, 72-74 (1979).

Affirmed.